

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 237

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO TAXATION; PROVIDING INCOME TAX CREDITS FOR
INTERESTS IN GEOTHERMAL, SOLAR THERMAL, SOLAR PHOTOVOLTAIC AND
COAL-BASED ELECTRIC GENERATING FACILITIES; CREATING THE
ADVANCED ENERGY TAX CREDITS FOR PERSONS WITH LEASEHOLD OR
PARTIAL INTERESTS IN CERTAIN ADVANCED ENERGY GENERATING
FACILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Income Tax Act is enacted
to read:

"NEW MATERIAL] ADVANCED ENERGY INCOME TAX CREDIT.--

A. The tax credit that may be claimed pursuant to
this section may be referred to as the "advanced energy income
tax credit".

B. A taxpayer who holds an interest in a qualified

.177450.5

underscoring material = new
[bracketed material] = delete

1 generating facility located in New Mexico and who files an
2 individual New Mexico income tax return may claim an advanced
3 energy income tax credit in an amount equal to six percent of
4 the eligible generation plant costs of a qualified generating
5 facility, subject to the limitations imposed in this section.
6 The tax credit claimed shall be verified and approved by the
7 department.

8 C. An entity that holds an interest in a qualified
9 generating facility may request a certificate of eligibility
10 from the department of environment to enable the requester to
11 apply for an advanced energy income tax credit. The department
12 of environment:

13 (1) shall determine if the facility is a
14 qualified generating facility;

15 (2) shall require that the requester provide
16 the department of environment with the information necessary to
17 assess whether the requester's facility meets the criteria to
18 be a qualified generating facility;

19 (3) shall issue a certificate to the requester
20 stating that the facility is or is not a qualified generating
21 facility within one hundred eighty days after receiving all
22 information necessary to make a determination;

23 (4) shall:

24 (a) issue a schedule of fees in which no
25 fee exceeds one hundred fifty thousand dollars (\$150,000); and

.177450.5

1 (b) deposit fees collected pursuant to
 2 this paragraph in the state air quality permit fund created
 3 pursuant to Section 74-2-15 NMSA 1978; and

4 (5) shall report annually to the appropriate
 5 interim legislative committee information that will allow the
 6 legislative committee to analyze the effectiveness of the
 7 advanced energy tax credits, including the identity of
 8 qualified generating facilities, the energy production means
 9 used, the amount of emissions identified in this section
 10 reduced and removed by those qualified generating facilities
 11 and whether any requests for certificates of eligibility could
 12 not be approved due to program limits.

13 D. A taxpayer who holds an interest in a qualified
 14 generating facility may be allocated the right to claim the
 15 advanced energy income tax credit without regard to the
 16 taxpayer's relative interest in the qualified generating
 17 facility if:

18 (1) the business entity making the allocation
 19 provides notice of the allocation and the taxpayer's interest
 20 in the qualified generating facility to the department on forms
 21 prescribed by the department;

22 (2) allocations to the taxpayer and all other
 23 taxpayers allocated a right to claim the advanced energy tax
 24 credit shall not exceed one hundred percent of the advanced
 25 energy tax credit allowed for the qualified generating

.177450.5

underscored material = new
 [bracketed material] = delete

1 facility; and

2 (3) the taxpayer and all other taxpayers
3 allocated a right to claim the advanced energy tax credits
4 collectively own at least a five percent interest in the
5 qualified generating facility.

6 E. To claim the advanced energy income tax credit,
7 a taxpayer shall submit with the taxpayer's New Mexico income
8 tax return a certificate of eligibility from the department of
9 environment stating that the taxpayer may be eligible for
10 advanced energy tax credits. The taxation and revenue
11 department shall provide credit claims forms. A credit claim
12 form shall accompany any return in which the taxpayer wishes to
13 apply for an approved credit, and the claim shall specify the
14 amount of credit intended to apply to each return. The
15 taxation and revenue department shall determine the amount of
16 advanced energy income tax credit for which the taxpayer may
17 apply.

18 F. Upon receipt of the notice of an allocation of
19 the right to claim all or a portion of the advanced energy
20 income tax credit, the department shall verify the allocation
21 due to the recipient.

22 G. A husband and wife who file separate returns for
23 a taxable year in which they could have filed a joint return
24 may each claim only one-half of the advanced energy income tax
25 credit that would have been allowed on a joint return.

.177450.5

1 H. The total amount of all advanced energy tax
2 credits claimed shall not exceed the total amount determined by
3 the department to be allowable pursuant to this section, the
4 Corporate Income and Franchise Tax Act and Section 7-9G-2 NMSA
5 1978.

6 I. Any balance of the advanced energy income tax
7 credit that the taxpayer is approved to claim may be claimed by
8 the taxpayer as an advanced energy combined reporting tax
9 credit allowed pursuant to Section 7-9G-2 NMSA 1978. If the
10 advanced energy income tax credit exceeds the amount of the
11 taxpayer's tax liabilities pursuant to the Income Tax Act and
12 Section 7-9G-2 NMSA 1978 in the taxable year in which it is
13 claimed, the balance of the unpaid credit may be carried
14 forward for ten years and claimed as an advanced energy income
15 tax credit or an advanced energy combined reporting tax credit.
16 The advanced energy income tax credit is not refundable.

17 J. A taxpayer claiming the advanced energy income
18 tax credit pursuant to this section is ineligible for credits
19 pursuant to the Investment Credit Act or any other credit that
20 may be taken pursuant to the Income Tax Act or credits that may
21 be taken against the gross receipts tax, compensating tax or
22 withholding tax for the same expenditures.

23 K. The aggregate amount of all advanced energy tax
24 credits that may be claimed with respect to a qualified
25 generating facility shall not exceed sixty million dollars

.177450.5

1 (\$60,000,000).

2 L. As used in this section:

3 (1) "advanced energy tax credit" means the
4 advanced energy income tax credit, the advanced energy
5 corporate income tax credit and the advanced energy combined
6 reporting tax credit;

7 (2) "coal-based electric generating facility"
8 means a new or repowered generating facility and an associated
9 coal gasification facility, if any, that uses coal to generate
10 electricity and that meets the following specifications:

11 (a) emits the lesser of: 1) what is
12 achievable with the best available control technology; or 2)
13 thirty-five thousandths pound per million British thermal units
14 of sulfur dioxide, twenty-five thousandths pound per million
15 British thermal units of oxides of nitrogen and one hundredth
16 pound per million British thermal units of total particulates
17 in the flue gas;

18 (b) removes the greater of: 1) what is
19 achievable with the best available control technology; or 2)
20 ninety percent of the mercury from the input fuel;

21 (c) captures and sequesters or controls
22 carbon dioxide emissions so that by the later of January 1,
23 2017 or eighteen months after the commercial operation date of
24 the coal-based electric generating facility, no more than one
25 thousand one hundred pounds per megawatt-hour of carbon dioxide

.177450.5

1 is emitted into the atmosphere;

2 (d) all infrastructure required for
3 sequestration is in place by the later of January 1, 2017 or
4 eighteen months after the commercial operation date of the
5 coal-based electric generating facility;

6 (e) includes methods and procedures to
7 monitor the disposition of the carbon dioxide captured and
8 sequestered from the coal-based electric generating facility;
9 and

10 (f) does not exceed a name-plate
11 capacity of seven hundred net megawatts;

12 (3) "eligible generation plant costs" means
13 expenditures for the development and construction of a
14 qualified generating facility, including permitting; site
15 characterization and assessment; engineering; design; carbon
16 dioxide capture, treatment, compression, transportation and
17 sequestration; site and equipment acquisition; and fuel supply
18 development used directly and exclusively in a qualified
19 generating facility;

20 (4) "entity" means an individual, estate,
21 trust, receiver, cooperative association, club, corporation,
22 company, firm, partnership, limited liability company, limited
23 liability partnership, joint venture, syndicate or other
24 association or a gas, water or electric utility owned or
25 operated by a county or municipality;

.177450.5

1 (5) "geothermal electric generating facility"
2 means a facility with a name-plate capacity of one megawatt or
3 more that uses geothermal energy to generate electricity,
4 including a facility that captures and provides geothermal
5 energy to a preexisting electric generating facility using
6 other fuels in part;

7 (6) "interest in a qualified generating
8 facility" means title to a qualified generating facility; a
9 leasehold interest in a qualified generating facility; an
10 ownership interest in a business or entity that is taxed for
11 federal income tax purposes as a partnership that holds title
12 to or a leasehold interest in a qualified generating facility;
13 or an ownership interest, through one or more intermediate
14 entities that are each taxed for federal income tax purposes as
15 a partnership, in a business that holds title to or a leasehold
16 interest in a qualified generating facility;

17 (7) "name-plate capacity" means the maximum
18 rated output of the facility measured as alternating current or
19 the equivalent direct current measurement;

20 (8) "qualified generating facility" means a
21 facility that begins construction not later than December 31,
22 2015 and is:

23 (a) a solar thermal electric generating
24 facility that begins construction on or after July 1, 2007 and
25 that may include an associated renewable energy storage

.177450.5

1 facility;

2 (b) a solar photovoltaic electric
 3 generating facility that begins construction on or after July
 4 1, 2009 and that may include an associated renewable energy
 5 storage facility;

6 (c) a geothermal electric generating
 7 facility that begins construction on or after July 1, 2009;

8 (d) a recycled energy project if that
 9 facility begins construction on or after July 1, 2007; or

10 (e) a new or repowered coal-based
 11 electric generating facility and an associated coal
 12 gasification facility;

13 (9) "recycled energy" means energy produced
 14 by a generation unit with a name-plate capacity of not more
 15 than fifteen megawatts that converts the otherwise lost energy
 16 from the exhaust stacks or pipes to electricity without
 17 combustion of additional fossil fuel;

18 (10) "sequester" means to store, or
 19 chemically convert, carbon dioxide in a manner that prevents
 20 its release into the atmosphere and may include the use of
 21 geologic formations and enhanced oil, coalbed methane or
 22 natural gas recovery techniques;

23 (11) "solar photovoltaic electric generating
 24 facility" means an electric generating facility with a name-
 25 plate capacity of one megawatt or more that uses solar

.177450.5

underscored material = new
 [bracketed material] = delete

1 photovoltaic energy to generate electricity; and

2 (12) "solar thermal generating facility"

3 means an electric generating facility with a name-plate
4 capacity of one megawatt or more that uses solar thermal energy
5 to generate electricity, including a facility that captures and
6 provides solar energy to a preexisting electric generating
7 facility using other fuels in part."

8 Section 2. A new section of the Corporate Income and
9 Franchise Tax Act is enacted to read:

10 "[NEW MATERIAL] ADVANCED ENERGY CORPORATE INCOME TAX
11 CREDIT.--

12 A. The tax credit that may be claimed pursuant to
13 this section may be referred to as the "advanced energy
14 corporate income tax credit".

15 B. A taxpayer that holds an interest in a qualified
16 generating facility located in New Mexico and that files a New
17 Mexico corporate income tax return may claim an advanced energy
18 corporate income tax credit in an amount equal to six percent
19 of the eligible generation plant costs of a qualified
20 generating facility, subject to the limitations imposed in this
21 section. The tax credit claimed shall be verified and approved
22 by the department.

23 C. An entity that holds an interest in a qualified
24 generating facility may request a certificate of eligibility
25 from the department of environment to enable the requester to

.177450.5

1 apply for an advanced energy corporate income tax credit. The
2 department of environment:

3 (1) shall determine if the facility is a
4 qualified generating facility;

5 (2) shall require that the requester provide
6 the department of environment with the information necessary to
7 assess whether the requester's facility meets the criteria to
8 be a qualified generating facility;

9 (3) shall issue a certificate to the
10 requester stating that the facility is or is not a qualified
11 generating facility within one hundred eighty days after
12 receiving all information necessary to make a determination;

13 (4) shall:

14 (a) issue a schedule of fees in which no
15 fee exceeds one hundred fifty thousand dollars (\$150,000); and

16 (b) deposit fees collected pursuant to
17 this paragraph in the state air quality permit fund created
18 pursuant to Section 74-2-15 NMSA 1978; and

19 (5) shall report annually to the appropriate
20 interim legislative committee information that will allow the
21 legislative committee to analyze the effectiveness of the
22 advanced energy tax credits, including the identity of
23 qualified generating facilities, the energy production means
24 used, the amount of emissions identified in this section
25 reduced and removed by those qualified generating facilities

.177450.5

1 and whether any requests for certificates of eligibility could
2 not be approved due to program limits.

3 D. A taxpayer that holds an interest in a qualified
4 generating facility may be allocated the right to claim the
5 advanced energy corporate income tax credit without regard to
6 the taxpayer's relative interest in the qualified generating
7 facility if:

8 (1) the business entity making the allocation
9 provides notice of the allocation and the taxpayer's interest
10 in the qualified generating facility to the department on forms
11 prescribed by the department;

12 (2) allocations to the taxpayer and all other
13 taxpayers allocated a right to claim the advanced energy tax
14 credit shall not exceed one hundred percent of the advanced
15 energy tax credit allowed for the qualified generating
16 facility; and

17 (3) the taxpayer and all other taxpayers
18 allocated a right to claim the advanced energy tax credits
19 collectively own at least a five percent interest in the
20 qualified generating facility.

21 E. Upon receipt of the notice of an allocation of
22 the right to claim all or a portion of the advanced energy
23 corporate income tax credit, the department shall verify the
24 allocation due to the recipient.

25 F. To claim the advanced energy corporate income

.177450.5

1 tax credit, a taxpayer shall submit with the taxpayer's New
2 Mexico corporate income tax return a certificate of eligibility
3 from the department of environment stating that the taxpayer
4 may be eligible for advanced energy tax credits. The taxation
5 and revenue department shall provide credit claim forms. A
6 credit claim form shall accompany any return in which the
7 taxpayer wishes to apply for an approved credit, and the claim
8 shall specify the amount of credit intended to apply to each
9 return. The taxation and revenue department shall determine
10 the amount of advanced energy corporate income tax credit for
11 which the taxpayer may apply.

12 G. The total amount of all advanced energy tax
13 credits claimed shall not exceed the total amount determined by
14 the department to be allowable pursuant to this section, the
15 Income Tax Act and Section 7-9G-2 NMSA 1978.

16 H. Any balance of the advanced energy corporate
17 income tax credit that the taxpayer is approved to claim may be
18 claimed by the taxpayer as an advanced energy combined
19 reporting tax credit allowed pursuant to Section 7-9G-2 NMSA
20 1978. If the advanced energy corporate income tax credit
21 exceeds the amount of the taxpayer's tax liabilities pursuant
22 to the Corporate Income and Franchise Tax Act and Section
23 7-9G-2 NMSA 1978 in the taxable year in which it is claimed,
24 the balance of the unpaid credit may be carried forward for ten
25 years and claimed as an advanced energy corporate income tax

.177450.5

1 credit or an advanced energy combined reporting tax credit.
2 The advanced energy corporate income tax credit is not
3 refundable.

4 I. A taxpayer claiming the advanced energy
5 corporate income tax credit pursuant to this section is
6 ineligible for credits pursuant to the Investment Credit Act or
7 any other credit that may be taken pursuant to the Corporate
8 Income and Franchise Tax Act or credits that may be taken
9 against the gross receipts tax, compensating tax or withholding
10 tax for the same expenditures.

11 J. The aggregate amount of all advanced energy tax
12 credits that may be claimed with respect to a qualified
13 generating facility shall not exceed sixty million dollars
14 (\$60,000,000).

15 K. As used in this section:

16 (1) "advanced energy tax credit" means the
17 advanced energy income tax credit, the advanced energy
18 corporate income tax credit and the advanced energy combined
19 reporting tax credit;

20 (2) "coal-based electric generating facility"
21 means a new or repowered generating facility and an associated
22 coal gasification facility, if any, that uses coal to generate
23 electricity and that meets the following specifications:

24 (a) emits the lesser of: 1) what is
25 achievable with the best available control technology; or 2)

.177450.5

1 thirty-five thousandths pound per million British thermal units
 2 of sulfur dioxide, twenty-five thousandths pound per million
 3 British thermal units of oxides of nitrogen and one hundredth
 4 pound per million British thermal units of total particulates
 5 in the flue gas;

6 (b) removes the greater of: 1) what is
 7 achievable with the best available control technology; or 2)
 8 ninety percent of the mercury from the input fuel;

9 (c) captures and sequesters or controls
 10 carbon dioxide emissions so that by the later of January 1,
 11 2017 or eighteen months after the commercial operation date of
 12 the coal-based electric generating facility, no more than one
 13 thousand one hundred pounds per megawatt-hour of carbon dioxide
 14 is emitted into the atmosphere;

15 (d) all infrastructure required for
 16 sequestration is in place by the later of January 1, 2017 or
 17 eighteen months after the commercial operation date of the
 18 coal-based electric generating facility;

19 (e) includes methods and procedures to
 20 monitor the disposition of the carbon dioxide captured and
 21 sequestered from the coal-based electric generating facility;
 22 and

23 (f) does not exceed a name-plate
 24 capacity of seven hundred net megawatts;

25 (3) "eligible generation plant costs" means

.177450.5

underscored material = new
 [bracketed material] = delete

1 expenditures for the development and construction of a
2 qualified generating facility, including permitting; site
3 characterization and assessment; engineering; design; carbon
4 dioxide capture, treatment, compression, transportation and
5 sequestration; site and equipment acquisition; and fuel supply
6 development used directly and exclusively in a qualified
7 generating facility;

8 (4) "entity" means an individual, estate,
9 trust, receiver, cooperative association, club, corporation,
10 company, firm, partnership, limited liability company, limited
11 liability partnership, joint venture, syndicate or other
12 association or a gas, water or electric utility owned or
13 operated by a county or municipality;

14 (5) "geothermal electric generating facility"
15 means a facility with a name-plate capacity of one megawatt or
16 more that uses geothermal energy to generate electricity,
17 including a facility that captures and provides geothermal
18 energy to a preexisting electric generating facility using
19 other fuels in part;

20 (6) "interest in a qualified generating
21 facility" means title to a qualified generating facility; a
22 leasehold interest in a qualified generating facility; an
23 ownership interest in a business or entity that is taxed for
24 federal income tax purposes as a partnership that holds title
25 to or a leasehold interest in a qualified generating facility;

.177450.5

1 or an ownership interest, through one or more intermediate
2 entities that are each taxed for federal income tax purposes as
3 a partnership, in a business that holds title to or a leasehold
4 interest in a qualified generating facility;

5 (7) "name-plate capacity" means the maximum
6 rated output of the facility measured as alternating current or
7 the equivalent direct current measurement;

8 (8) "qualified generating facility" means a
9 facility that begins construction not later than December 31,
10 2015 and is:

11 (a) a solar thermal electric generating
12 facility that begins construction on or after July 1, 2007 and
13 that may include an associated renewable energy storage
14 facility;

15 (b) a solar photovoltaic electric
16 generating facility that begins construction on or after July
17 1, 2009 and that may include an associated renewable energy
18 storage facility;

19 (c) a geothermal electric generating
20 facility that begins construction on or after July 1, 2009;

21 (d) a recycled energy project if that
22 facility begins construction on or after July 1, 2007; or

23 (e) a new or repowered coal-based
24 electric generating facility and an associated coal
25 gasification facility;

.177450.5

1 (9) "recycled energy" means energy produced
2 by a generation unit with a name-plate capacity of not more
3 than fifteen megawatts that converts the otherwise lost energy
4 from the exhaust stacks or pipes to electricity without
5 combustion of additional fossil fuel;

6 (10) "sequester" means to store, or
7 chemically convert, carbon dioxide in a manner that prevents
8 its release into the atmosphere and may include the use of
9 geologic formations and enhanced oil, coalbed methane or
10 natural gas recovery techniques;

11 (11) "solar photovoltaic electric generating
12 facility" means an electric generating facility with a name-
13 plate capacity of one megawatt or more that uses solar
14 photovoltaic energy to generate electricity; and

15 (12) "solar thermal electric generating
16 facility" means an electric generating facility with a name-
17 plate capacity of one megawatt or more that uses solar thermal
18 energy to generate electricity, including a facility that
19 captures and provides solar energy to a preexisting electric
20 generating facility using other fuels in part."

21 Section 3. Section 7-9G-2 NMSA 1978 (being Laws 2007,
22 Chapter 229, Section 1) is amended to read:

23 "7-9G-2. ADVANCED ENERGY COMBINED REPORTING TAX CREDIT--
24 GROSS RECEIPTS TAX--COMPENSATING TAX--WITHHOLDING TAX.--

25 A. Except as otherwise provided in this section, a

.177450.5

1 taxpayer that holds an interest in a qualified generating
2 facility located in New Mexico may claim a credit to be
3 computed pursuant to the provisions of this section. The
4 credit provided by this section may be referred to as the
5 "advanced energy combined reporting tax credit".

6 B. As used in this section:

7 (1) "advanced energy tax credit" means the
8 advanced energy income tax credit, the advanced energy
9 corporate income tax credit and the advanced energy combined
10 reporting tax credit;

11 (2) "coal-based electric generating facility"
12 means a new or repowered generating facility and an associated
13 coal gasification facility, if any, that uses coal to generate
14 electricity and that meets the following specifications:

15 (a) emits the lesser of: 1) what is
16 achievable with the best available control technology; or 2)
17 thirty-five thousandths pound per million British thermal units
18 of sulfur dioxide, twenty-five thousandths pound per million
19 British thermal units of oxides of nitrogen and one hundredth
20 pound per million British thermal units of total particulates
21 in the flue gas;

22 (b) removes the greater of: 1) what is
23 achievable with the best available control technology; or 2)
24 ninety percent of the mercury from the input fuel;

25 (c) captures and sequesters or controls

.177450.5

1 carbon dioxide emissions so that by the later of January 1,
2 2017 or eighteen months after the commercial operation date of
3 the coal-based electric generating facility, no more than one
4 thousand one hundred pounds per megawatt-hour of carbon dioxide
5 is emitted into the atmosphere;

6 (d) all infrastructure required for
7 sequestration is in place by the later of January 1, 2017 or
8 eighteen months after the commercial operation date of the
9 coal-based electric generating facility;

10 (e) includes methods and procedures to
11 monitor the disposition of the carbon dioxide captured and
12 sequestered from the coal-based electric generating facility;
13 and

14 (f) does not exceed a name-plate
15 capacity of seven hundred net megawatts;

16 ~~[(1)]~~ (3) "department" means the taxation and
17 revenue department, the secretary of taxation and revenue or
18 any employee of the department exercising authority lawfully
19 delegated to that employee by the secretary;

20 ~~[(2)]~~ (4) "eligible generation plant costs"
21 means expenditures for the development and construction of a
22 qualified generating facility, including permitting; site
23 characterization and assessment; engineering; design; carbon
24 dioxide capture, treatment, compression, transportation and
25 sequestration; site and equipment acquisition; and fuel supply

.177450.5

1 development used directly and exclusively in a qualified
2 generating facility;

3 ~~[(3) "qualified generating facility" means a
4 new solar thermal electric generating facility that may include
5 an associated renewable energy storage facility; or recycled
6 energy projects that begins construction no later than December
7 31, 2015 or a new or re-powered coal-based electric generating
8 unit and an associated coal gasification facility, if any, that
9 begins construction no later than December 31, 2015 that meets
10 the following specifications:~~

11 ~~(a) emits the lesser of: 1) what is
12 achievable with the best available control technology; or 2)
13 thirty-five thousandths pound per million British thermal units
14 of sulfur dioxide, twenty-five thousandths pound per million
15 British thermal units of oxides of nitrogen and one hundredth
16 pound per million British thermal units of total particulates
17 in the flue gas;~~

18 ~~(b) removes the greater of: 1) what is
19 achievable with the best available control technology; or 2)
20 ninety percent of the mercury from the input fuel;~~

21 ~~(c) captures and sequesters or controls
22 carbon dioxide emissions so that by the later of January 1,
23 2017 or eighteen months after the commercial operation date of
24 the qualified generating facility, no more than one thousand
25 one hundred pounds per megawatt-hour of carbon dioxide is~~

.177450.5

1 ~~emitted into the atmosphere;~~

2 ~~(d) all infrastructure required for~~
3 ~~sequestration is in place by the later of January 1, 2017 or~~
4 ~~eighteen months after the commercial operation date of the~~
5 ~~qualified generating facility;~~

6 ~~(e) includes methods and procedures to~~
7 ~~monitor the disposition of the carbon dioxide captured and~~
8 ~~sequestered from the facility; and~~

9 ~~(f) does not exceed seven hundred net~~
10 ~~megawatts name-plate capacity;]~~

11 (5) "entity" means an individual, estate,
12 trust, receiver, cooperative association, club, corporation,
13 company, firm, partnership, limited liability company, limited
14 liability partnership, joint venture, syndicate or other
15 association or a gas, water or electric utility owned or
16 operated by a county or municipality;

17 (6) "geothermal electric generating facility"
18 means a facility with a name-plate capacity of one megawatt or
19 more that uses geothermal energy to generate electricity,
20 including a facility that captures and provides geothermal
21 energy to a preexisting electric generating facility using
22 other fuels in part;

23 (7) "gross receipts tax due to the state"
24 means the taxpayer's gross receipts liability for the reporting
25 period that is:

.177450.5

1 (a) determined by, if the taxpayer's
2 business location is described in Subsection A of Section
3 7-1-6.4 NMSA 1978, multiplying the taxpayer's taxable gross
4 receipts for the reporting period by the difference between the
5 gross receipts tax rate specified in Section 7-9-4 NMSA 1978
6 and one and two hundred twenty-five thousandths percent; or

7 (b) equal to, if the taxpayer's business
8 location is not described in Subsection A of Section 7-1-6.4
9 NMSA 1978, the gross receipts tax rate specified in Section
10 7-9-4 NMSA 1978;

11 (8) "interest in a qualified generating
12 facility" means title to a qualified generating facility; a
13 leasehold interest in a qualified generating facility; an
14 ownership interest in a business or entity that is taxed for
15 federal income tax purposes as a partnership that holds title
16 to or a leasehold interest in a qualified generating facility;
17 or an ownership interest, through one or more intermediate
18 entities that are each taxed for federal income tax purposes as
19 a partnership, in a business that holds title to or a leasehold
20 interest in a qualified generating facility;

21 (9) "name-plate capacity" means the maximum
22 rated output of the facility measured as alternating current or
23 the equivalent direct current measurement;

24 (10) "qualified generating facility" means a
25 facility that begins construction not later than December 31,

.177450.5

1 2015 and is:

2 (a) a solar thermal electric generating
3 facility that begins construction on or after July 1, 2007 and
4 that may include an associated renewable energy storage
5 facility;

6 (b) a solar photovoltaic electric
7 generating facility that begins construction on or after July
8 1, 2009 and that may include an associated renewable energy
9 storage facility;

10 (c) a geothermal electric generating
11 facility that begins construction on or after July 1, 2009;

12 (d) a recycled energy project if that
13 facility begins construction on or after July 1, 2007; or

14 (e) a new or repowered coal-based
15 electric generating facility and an associated coal
16 gasification facility;

17 ~~{4}~~ (11) "recycled energy" means energy
18 produced by a generation unit with a name-plate capacity of not
19 more than fifteen megawatts that converts the otherwise lost
20 energy from the exhaust stacks or pipes to electricity without
21 combustion of additional fossil fuel; ~~and~~

22 ~~{5}~~ (12) "sequester" means to store, or
23 chemically convert, carbon dioxide in a manner that prevents
24 its release into the atmosphere and may include the use of
25 geologic formations and enhanced oil, coalbed methane or

.177450.5

1 natural gas recovery techniques;

2 (13) "solar photovoltaic electric generating
 3 facility" means an electric generating facility with a name-
 4 plate capacity of one megawatt or more that uses solar
 5 photovoltaic energy to generate electricity; and

6 (14) "solar thermal electric generating
 7 facility" means an electric generating facility with a name-
 8 plate capacity of one megawatt or more that uses solar thermal
 9 energy to generate electricity, including a facility that
 10 captures and provides solar energy to a preexisting electric
 11 generating facility using other fuels in part.

12 C. A taxpayer that holds an interest in a qualified
 13 generating facility may be allocated the right to claim the
 14 advanced energy combined reporting tax credit without regard to
 15 the taxpayer's relative interest in the qualified generating
 16 facility if:

17 (1) the business entity making the allocation
 18 provides notice of the allocation and the taxpayer's interest
 19 in the qualified generating facility to the department on forms
 20 prescribed by the department;

21 (2) allocations to the taxpayer and all other
 22 taxpayers allocated a right to claim the advanced energy tax
 23 credit shall not exceed one hundred percent of the advanced
 24 energy tax credit allowed for the qualified generating
 25 facility; and

.177450.5

underscored material = new
 [bracketed material] = delete

1 (3) the taxpayer and all other taxpayers
2 allocated a right to claim the advanced energy tax credits
3 collectively own at least a five percent interest in the
4 qualified generating facility.

5 D. Upon receipt of the notice of an allocation of
6 the right to claim all or a portion of the advanced energy
7 combined reporting tax credit, the department shall verify the
8 allocation due to the recipient.

9 ~~[G.]~~ E. Subject to the limit imposed in Subsection
10 [H] K of this section, the advanced energy combined reporting
11 tax credit with respect to a qualified generating facility
12 shall equal ~~[no more than]~~ six percent of the eligible
13 generation plant costs of ~~[a]~~ the qualified generating
14 facility. Taxpayers eligible to claim an advanced energy
15 combined reporting tax credit holding less than one hundred
16 percent of the interest in the qualified generating facility
17 shall designate an individual to report annually to the
18 department. That designated individual shall report the
19 eligible generation plant costs incurred during the calendar
20 year and the relative interest of those costs attributed to
21 each eligible interest holder. The taxpayers shall submit a
22 copy of the relative interests attributed to each interest
23 holder to the department, and any change to the apportioned
24 interests shall be submitted to the department. The designated
25 person and the department may identify a mutually acceptable

.177450.5

underscored material = new
[bracketed material] = delete

1 reporting schedule.

2 ~~[D.]~~ F. A taxpayer may apply for the advanced
3 energy combined reporting tax credit by submitting to the
4 taxation and revenue department a certificate issued by the
5 department of environment pursuant to Subsection ~~[F]~~ K of this
6 section, documentation showing the taxpayer's interest in the
7 qualified generating facility identified in the certificate,
8 documentation of all eligible generation plant costs incurred
9 by the taxpayer prior to the date of the application by the
10 taxpayer for the advanced energy combined reporting tax credit
11 and any other information the taxation and revenue department
12 requests to determine the amount of tax credit due to the
13 taxpayer.

14 ~~[E.]~~ G. A taxpayer having applied for and been
15 granted approval ~~[for a]~~ to claim an advanced energy combined
16 reporting tax credit by the department pursuant to this section
17 may claim an amount of available credit against the taxpayer's
18 gross receipts tax, compensating tax or withholding tax due to
19 the state. Any balance of the advanced energy combined
20 reporting tax credit that the taxpayer is approved to claim
21 after applying that tax credit against the taxpayer's gross
22 receipts tax, compensating tax or withholding tax liabilities
23 may be claimed by the taxpayer against the taxpayer's tax
24 liability pursuant to the Income Tax Act by claiming an
25 advanced energy income tax credit or against the taxpayer's tax

.177450.5

1 liability pursuant to the Corporate Income and Franchise Tax
2 Act by claiming an advanced energy corporate income tax credit.
3 The advanced energy combined reporting tax credit is not
4 refundable. The total amount of tax credit claimed pursuant to
5 this section, when combined with the advanced energy tax
6 credits claimed pursuant to the Income Tax Act and the
7 Corporate Income and Franchise Tax Act, shall not exceed the
8 total amount of advanced energy tax credits approved by the
9 department for the qualified generating facility.

10 [F.] H. A taxpayer that is liable for the payment
11 of gross receipts or compensating tax with respect to the
12 ownership, development, construction, maintenance or operation
13 of a new coal-based electric generating facility that does not
14 meet the criteria for a qualified generating facility and that
15 begins construction after January 1, 2007 shall not claim an
16 advanced energy tax combined reporting credit pursuant to this
17 section or a gross receipts tax credit, a compensating tax
18 credit or a withholding tax credit pursuant to any other state
19 law.

20 [G.] I. If the amount of the advanced energy tax
21 credit [~~claimed~~] approved by the department exceeds the
22 taxpayer's liability, the excess may be carried forward for up
23 to [~~five~~] ten years.

24 [H.] J. The aggregate amount of advanced energy tax
25 credit that may be claimed with respect to each qualified

underscored material = new
[bracketed material] = delete

1 generating facility shall not exceed sixty million dollars
 2 (\$60,000,000).

3 ~~[I.]~~ K. An entity that holds ~~[title to]~~ an interest
 4 in a qualified generating facility may request a certificate of
 5 eligibility from the department of environment to enable the
 6 requester to apply for the advanced energy combined reporting
 7 tax credit. The department of environment:

8 (1) shall determine if the facility is a
 9 qualified generating facility;

10 (2) shall require that the requester provide
 11 the department of environment with the information necessary to
 12 assess whether the requester's facility meets the criteria to
 13 be a qualified generating facility;

14 (3) shall issue a certificate to the
 15 requester stating that the facility is or is not a qualified
 16 generating facility within one hundred eighty days after
 17 receiving all information necessary to make a determination;

18 (4) shall:

19 (a) issue rules governing the procedure
 20 for administering the provisions of this subsection and
 21 Subsection ~~[J]~~ L of this section and for providing certificates
 22 of eligibility for advanced energy tax credits;

23 (b) issue a schedule of fees in which no
 24 fee exceeds one hundred fifty thousand dollars (\$150,000); and

25 (c) deposit fees collected pursuant to

.177450.5

underscored material = new
 [bracketed material] = delete

1 this paragraph in the state air quality permit fund created
2 pursuant to Section 74-2-15 NMSA 1978; and

3 (5) shall report annually to the appropriate
4 interim legislative committee information that will allow the
5 legislative committee to analyze the effectiveness of the
6 advanced energy tax [~~credit~~] credits, including the identity of
7 qualified generating facilities, the energy production means
8 used, the amount of emissions identified in this section
9 reduced and removed by those qualified generating facilities
10 and whether any requests for certificates of eligibility could
11 not be approved due to program limits.

12 [~~J.~~] L. If the department of environment issues a
13 certificate of eligibility to a taxpayer stating that the
14 taxpayer [~~is~~] holds an interest in a qualified generating
15 facility and the taxpayer does not sequester or control carbon
16 dioxide emissions to the extent required by this section by
17 the later of January 1, 2017 or eighteen months after the
18 commercial operation date of the qualified generating
19 facility, the taxpayer's certification as a qualified
20 generating facility shall be revoked by the department of
21 environment and the taxpayer shall [~~refund~~] repay to the state
22 tax credits granted pursuant to this section; provided that if
23 the taxpayer demonstrates to the department of environment
24 that the taxpayer made every effort to sequester or control
25 carbon dioxide emissions to the extent feasible and the

.177450.5

1 facility's inability to meet the sequestration requirements of
2 a qualified generating facility was beyond the facility's
3 control, in which case the department of environment shall
4 determine, after a public hearing, the amount of the tax
5 credit that should be [~~refunded~~] repaid to the state. The
6 department of environment, in its determination, shall
7 consider the environmental performance of the facility and the
8 extent to which the inability to meet the sequestration
9 requirements of a qualified generating facility was in the
10 control of the taxpayer. The [~~refund~~] repayment as determined
11 by the department of environment shall be paid within one
12 hundred eighty days following a final order by the department
13 of environment.

14 [~~K.~~] M. Expenditures for which a taxpayer claims
15 [~~a~~] an advanced energy combined reporting tax credit pursuant
16 to this section are ineligible for credits pursuant to the
17 provisions of the Investment Credit Act or any other credit
18 against personal income tax, corporate income tax,
19 compensating tax, gross receipts tax or withholding tax.

20 [~~L.~~] N. A taxpayer shall apply for approval for a
21 credit within one year following the end of the calendar year
22 in which the eligible generation plant costs are incurred."